

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

WILMER CATALAN-RAMIREZ,)	
)	
Plaintiff,)	No. 17 CV 3258
v.)	
)	Judge Joan H. Lefkow
)	
RICARDO WONG, <i>et al.</i> ,)	Magistrate Judge Jeffrey Cole
)	
Defendants.)	

**MCHENRY COUNTY DEFENDANTS' MOTION TO SEVER AND TRANSFER
VENUE TO THE WESTERN DIVISION OR, IN THE ALTERNATIVE, TO
DISMISS THEM FROM COUNTS III, V AND VI THE AMENDED
COMPLAINT**

Defendants McHenry County, McHenry County Sheriff Bill Prim and Chief David Devane (the "McHenry County Defendants"), by their attorneys, Patrick Kenneally, McHenry County State's Attorney, and his Assistant State's Attorneys, George M. Hoffman, Michelle J. Courier and Jana Blake Dickson, pursuant to Rules 12(b)(6) and 21, Fed. R. Civ. P., and 28 U.S.C. § 1404(a), hereby move this Court for an order severing the claims against the McHenry County Defendants and transferring them to the Western Division or, in the alternative, dismissing them from Counts III, V and VI on the ground that those counts fail to state a claim upon which relief can be granted. In support of this Motion, McHenry County Defendants state as follows:

1. In summary, the amended complaint alleges that plaintiff was shot multiple times in a drive-by shooting in Chicago. Plaintiff further alleges that he was improperly included in a "gang database" created by the Chicago Police

Department and that as a result of his inclusion in that gang database, he was arrested by U.S. Immigration and Customs Enforcement. Plaintiff alleges that during that arrest, ICE used excessive force causing him injury. Plaintiff also alleges that since his arrest he was been detained in the McHenry County Jail, under an agreement with ICE. Plaintiff alleges improper medical care at the Jail as well as complaining of his conditions of confinement and other treatment at the Jail.

2. Counts I and II are directed against various ICE agents allegedly involved in plaintiff's arrest. Count III, against the McHenry County Defendants, Correct Care Solutions ("CCS"), the Jail's medical provider, and Michael Keegan, a CCS health administrator, alleges a failure to provide medical care. Count IV is directed against Sheriff Prim and alleges a violation of the Americans with Disabilities Act. Count V, against Defendants Prim, Devane, Keegan and CCS, alleges unlawful retaliation in violation of the First and Fourteenth Amendments. Count VI alleges a denial of due process with respect to plaintiff being shackled when transported out of the Jail and is directed against defendants Prim, Devane and Ricardo Wong, who is alleged to be the Field Office Director, Chicago, of ICE. Counts VII-X are directed at the City of Chicago and various police officers, in connection with the creation and maintenance of an alleged gang database.

3. The allegations against the McHenry County Defendants (and CCS and Michael Keegan) are separate from and unrelated to the allegations against the other defendants, both substantively and temporally. All of the claims against the

McHenry County Defendants (and CCS and Michael Keegan) concern events which occurred after plaintiff was arrested and involve his medical care and conditions of confinement while detained in the McHenry County Jail. The McHenry County Defendants (and CCS and Michael Keegan) are not alleged to have had anything to do with either his arrest or the alleged gang database. The claims against the McHenry County Defendants should be severed.

5. All the events about which plaintiff complains against the McHenry County Defendants occurred in McHenry County. In addition, all of the witnesses and other evidence relevant to the claims against the McHenry County Defendants are located within the Western Division. There is no overlap between the claims alleged against the McHenry County Defendants and the other defendants or the evidence relating to those claims. Therefore, the claims against the McHenry County Defendants alleged in Counts III-VI should be transferred to the Western Division.

6. In the alternative, the McHenry County Defendants request that the claims alleged against them in Counts III, V and VI be dismissed on the grounds that they fail to state a claim upon which relief can be granted. Because both Sheriff Prim and Chief Devane are sued in their official capacity only, the claims are deemed to be claims against McHenry County. As there is no *respondeat superior* liability under 42 U.S.C. § 1983, to state a claim, plaintiff must allege a policy, practice or custom, which the amended complaint fails to do.

7. The reasons and authorities in support of this motion are contained in

the Memorandum of Law in Support of McHenry County Defendants' Motion to Sever and Transfer Venue to the Western Division or, in the Alternative, to Dismiss Them from Counts III, V and VI of the Amended Complaint.

WHEREFORE, defendants McHenry County, McHenry County Sheriff Bill Prim and Chief David Devane, request this Court to sever the claims against them and transfer those claims to the Western Division or, in the alternative, dismiss these defendants from Counts III, V and VI.

McHenry County, McHenry County Sheriff
Bill Prim and Chief David Devane

/s/George M. Hoffman
One of their attorneys

Patrick Kenneally, McHenry County State's Attorney
George M. Hoffman (6180738)
gmhoffman@co.mchenry.il.us
Michelle J. Courier (6255711)
mjcourier@co.mchenry.il.us
Jana Blake Dickson (6305741)
jeblake@co.mchenry.il.us
Assistant State's Attorneys
McHenry County Government Center
2200 N. Seminary Avenue
Woodstock, IL 60098
Tel. (815) 334-4159
Fax (815) 337-0872

CERTIFICATE OF SERVICE

I, George M. Hoffman, hereby certify that on May 25, 2017, I caused the foregoing **McHenry County Defendants' Motion to Sever and Transfer to the Western Division or, in the Alternative, to Dismiss Them from Counts III, V and VI of the Amended Complaint** to be served upon all counsel on the attached Service List by electronic filing via the CM/ECF system.

By: s/George M. Hoffman
Assistant State's Attorney

SERVICE LIST

Attorneys for Plaintiff

Sheila A. Bedi
Vanessa del Valle
Roderick and Solange MacArthur Justice Center
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-1271
sheila.bedi@law.northwestern.edu
vanessa.delvalle@law.northwestern.edu

“Julie” Yihong Mao
Sejal Zota
National Immigration Project of the National Lawyers Guild
14 Beacon Street, Suite 602
Boston, MA 02108
(617) 227 – 9727
julie@nipnlg.org
sejal@nipnlg.org

Attorneys for Ricardo Wong

Craig Arthur Oswald
Alex Harms Hartzler
United States Attorney’s Office
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-1390
Craig.oswald@usdoj.gov
alex.hartzler@usdoj.gov

Attorneys for CCS and Michael Keegan R.N.

Jana L. Brady
Heyl, Royster, Voelker & Allen
120 West State Street, Second Floor
P.O. Box 1288
Rockford, Illinois 61105-1288
(815) 963-4454
jbrady@heyloyster.com

Amee Lakhani
Andrew J. Roth
Heyl, Royster, Voelker & Allen
33 N. Dearborn Street. 7th Floor
Chicago, IL 60602
(312) 853-8714
alakhani@heyloyster.com
aroth@heyloyster.com

Attorney for City of Chicago, Alfred Nagode, Christopher Kennedy & Eddie Johnson

Tara D. Kennedy
Assistant Corporation Counsel
City of Chicago, Department of Law
Constitutional and Commercial Litigation Division
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312)744-6975/9028
tara.kennedy@cityofchicago.org